

THE HONORABLE JOHN C. COUGHENOUR

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KYLE GIANIS,

Defendant.

No. CR04-334-JCC

DEFENDANT KYLE GIANIS'S
MOTION FOR DISTRICT COURT
REVIEW OF THE MAGISTRATE'S
PRETRIAL DETENTION ORDER

ORAL ARGUMENT REQUESTED

COMES NOW the defendant, KYLE GIANIS, by and through his attorneys, John Henry Browne and Emma Scanlan, and pursuant to 18 U.S.C. § 3145(b) and Western District of Washington MJR 12(c), moves the District Court to review the magistrate judge's determination that Mr. Gianis must suffer further pretrial detention. This motion for District Court review and revocation of the detention order is based on the fact that many members of Mr. Gianis's family have stepped forward since the initial detention hearing to vouch for Mr. Gianis and ensure his appearance for trial. This new information was unavailable to Mr. Gianis at the time of the initial hearing and thus provides sufficient grounds to re-open the issue of pretrial detention. This motion is based on the files and records herein, and the supporting memorandum of law.

I. FACTS RELEVANT TO MOTION

A. Mr. Gianis's Motion for Reconsideration of Pretrial Detention Order and Magistrate Theiler's Order Denying Request.

On March 14, 2008, Mr. Gianis filed a Motion for Reconsideration of Pretrial Detention Order. Dkt. 15. The motion was premised on the fact that Mr. Gianis was simply unaware of the charges pending against him in the Western District of

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ORDER- I

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1 Washington; in addition, many of Mr. Gianis's family members became aware of his
 2 situation only after the initial detention hearing in front of Magistrate Judge Monica J.
 3 Benton and have since that time volunteered letters in support of Mr. Gianis. See Def.
 4 Mot. for Reconsideration of Pretrial Detention Order, Ex. A. These same family
 5 members will take the necessary steps to ensure Mr. Gianis's appearance at any future
 judicial proceedings.

6 On March 17, 2008, The Honorable John C. Coughenour, United States District
 7 Judge, entered a Minute Order referring the issue of Mr. Gianis's pretrial detention to
 Magistrate Judge Mary Alice Theiler for consideration. Dkt. 17.

8 Two days later, on March 19, 2008, Magistrate Theiler entered an Order Denying
 9 Request to Reopen Detention Hearing. Dkt. 19. In her Order, Magistrate Theiler cited 18
 10 U.S.C. § 3142(f)(2)(B) for the proposition that a detention hearing may be reopened if
 11 "the judicial officer finds that information that was not known to the movant at the time
 12 of the hearing and that has a material bearing on the issue whether there are conditions of
 release that will reasonably assure the appearance of such person as required and the
 safety of any other person and the community."

13 While this is indeed the correct standard, Magistrate Theiler then nevertheless
 14 proceeded to ignore the new information presented by Mr. Gianis in his Motion for
 15 Reconsideration, stating rather that Mr. Gianis failed to demonstrate a lack of knowledge
 16 of the pending charges. According to Magistrate Theiler, Mr. Gianis purportedly knew of
 17 the pending federal charges so that the information was known to him at the time of the
 initial detention hearing and the issue of detention was therefore foreclosed.

18 **B. Magistrate Theiler's Order Failed to Consider the New Information**
 19 **Offered by Mr. Gianis**

20 As defense counsel became involved in this case only immediately prior to Mr.
 21 Gianis's arraignment and detention hearing, Mr. Gianis was unable to fully present his
 22 argument in favor of conditional release during the initial detention hearing. The Court
 23 should therefore grant another hearing in which Mr. Gianis can present additional
 24 evidence, particularly the strong letters of support from his family and the fact that the
 government has neither physical evidence nor material cooperating witnesses implicating
 Mr. Gianis.

1 First, Mr. Gianis was unaware of the charges pending against him in the Western
 2 District of Washington. Second, Mr. Gianis did not have the support of his family at the
 3 initial detention hearing so that the letters in support of Mr. Gianis and the offers to
 4 ensure his appearance at trial constitute information unknown to Mr. Gianis at the time of
 the initial hearing.

5 Magistrate Theiler, therefore, imputed knowledge to Mr. Gianis, which he
 6 categorically denies, while simultaneously disregarding the fact that Mr. Gianis's family
 7 did not participate in the first detention hearing and since that time has forwarded letters
 8 vouching for Mr. Gianis and assuring the Court that Mr. Gianis will return for any future
 9 proceedings if conditionally released. These two factors should have prompted the Court
 to reopen the issue of detention; because Magistrate Theiler failed to do so, Mr. Gianis
 now requests that the District Court revisit the issue.

10 II. ARGUMENT

11 Given Mr. Gianis's lack of any criminal history in the United States, his lack of
 12 any criminal convictions in his home country of Canada, the weak allegations against Mr.
 13 Gianis, the lack of physical evidence connecting Mr. Gianis to the charged offense, Mr.
 14 Gianis's stable employment, and the strong support from Mr. Gianis's family, the Court
 should order Mr. Gianis's conditional release pending trial.

15 Magistrate Theiler's Order relied on District Judge Benton's findings that Mr.
 16 Gianis poses a risk of nonappearance due to the *rebuttable* presumption in favor of
 17 detention under 18 U.S.C. § 3142(f); Mr. Gianis's Canadian citizenship; a firearms
 18 charge- but no conviction- in Canada; and the nature of the current charges. Dkt. 19 at
 2:14-18. At the initial detention hearing, however, defense counsel had just met Mr.
 19 Gianis and did not have sufficient time to prepare for detention hearing. Mr. Gianis
 therefore did not benefit from any family support at the initial detention hearing.

20 As mentioned above, a court may reopen a detention hearing at any time before
 21 trial if new information is discovered that has a material bearing on the issue whether
 22 there are conditions of release that will reasonably assure the appearance of the defendant
 and the safety of the community. United States v. Strong, 489 F.3d 1055, 1060 (9th Cir.
 23 2007); see also Ward, 63 F.Supp.2d at 1206; 18 U.S.C. § 3142(f)(2)(B).

1 On appeal, or on a motion to reconsider, a court reviews the “[f]actual findings
 2 underlying a district court’s pretrial release or detention order, including whether a
 3 defendant is a flight risk or a danger to the public ... under the clearly erroneous
 4 standard, ‘coupled with an independent review of the facts, the findings, and the record to
 5 determine whether the order may be upheld.’” United States v. Fidler, 419 F.3d 1026,
 6 1029 (9th Cir. 2006); see also United States v. Gebro, 948 F.2d 1118, 1121 (9th Cir.
 7 1991). Accordingly, the court must “make an independent examination of the record to
 8 determine whether the pretrial detention order is consistent with the defendant’s
 9 constitutional and statutory rights and arrive at [the] conclusion *de novo*.” United States
v. Townsend, 897 F.2d 989, 994 (9th Cir. 1990).

9 In Ward, for example, the defendant sought review of a Detention Order on the
 10 specific ground that several immediate family members who were unavailable at the
 11 initial detention hearing stepped forward to assure his appearance at trial. 63 F.Supp.2d
 12 at 1206. The court held that although the defendant’s family and relatives were
 13 obviously known to him at the time of his detention hearing, since it was difficult for the
 14 defendant to secure their attendance on such very short notice they were in essence newly
 15 discovered. The court found it relevant whether all of the relatives were contacted and
 16 available for the detention hearing and which relatives received notice; if not everyone
 17 received notice, they were unknown at the time of the initial hearing. Id. at 1206-07.

16 Ward, therefore, is directly analogous to the situation presented here: after an
 17 initial determination of detention, the court reopened the detention issue because
 18 additional members of the defendant’s family came forward to ensure the defendant’s
 19 appearance at trial. Here, as Mr. Gianis’s family has had the time to compose letters to
 20 the Court detailing his community ties, financial resources, and economic and family
 21 stability, the Court should reconsider its determination of detention.

20 In sum, Mr. Gianis’s: unawareness of the charge pending against him, stable
 21 employment, unflinching family support, and desire to face the charges against him as
 22 soon as possible in order to clear his name are more than sufficient to rebut the
 23 presumption of detention in this case.

